

**Atrium Hospitality LP d/b/a The Westin Southfield-  
Detroit *and* Catherine Walker.** Case 07–CA–  
239593

CORRECTION

On January 4, 2021, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding in which an inadvertent error appears.

On page 2 of the decision the lettered **item (a)** should be **item 1(a)**.

This sentence is corrected to reflect this change. Please substitute pages 1–2 for those previously issued.

Dated, Washington, D.C. January 6, 2021



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**Atrium Hospitality LP d/b/a The Westin Southfield-Detroit and Catherine Walker.** Case 07–CA–239593

January 5, 2021

**DECISION AND ORDER**

BY CHAIRMAN RING AND MEMBERS KAPLAN  
AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that Atrium Hospitality LP d/b/a The Westin Southfield-Detroit (the Respondent) has failed to file an answer to the complaint. Upon a charge filed by Catherine Walker on April 12, 2019, and amended charge filed on May 1, 2019, the General Counsel issued a complaint and notice of hearing on October 3, 2019, against the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the Act. The Respondent failed to file an answer.

On November 6, 2019, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. On November 19, 2020, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response to the notice. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is received on or before October 17, 2019, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated October 23, 2019 (which enclosed a copy of the complaint), advised the Respondent that unless an answer was received by October 30, 2019, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.<sup>1</sup>

<sup>1</sup> The General Counsel's Motion for Default Judgment indicates that the return receipt for the certified mail copy of the complaint was not returned, and postal service tracking information indicates that the item was not delivered. However, the General Counsel simultaneously served a copy of the complaint by regular mail on counsel for the Respondent. "Under agency law as well as the Federal Rules of Civil Procedure, service of process on an authorized agent constitutes effective service on the agent's principal. Restatement (Second) of Agency §268 (1958); Fed.R.Civ.P. 4(h)(1)." *United Electrical Contractors*

In the absence of good cause being shown for the failure to file an answer, we deem the allegations of the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent has been a limited partnership with an office and place of business in Southfield, Michigan (the Southfield facility), and has been engaged in the business of operating a hotel and providing food and lodgings.

In conducting its operations during the 12-month period ending December 31, 2018, the Respondent derived gross revenues in excess of \$500,000. During this period of time, the Respondent purchased and received at its Southfield facility goods valued in excess of \$5000 directly from points outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Local 24, UNITE HERE!, AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Ruth Callahan	-	Outlets Supervisor
Sandra Delgadillo	-	Assistant General Manager
Julie Jankowski	-	Human Resources Manager
Alicia Jones	-	Outlets Supervisor
Earlene Smith	-	Accounting Manager
Michelle Strain	-	Outlets Manager
Jerry Tononi	-	General Manager

The following employees of the Respondent, the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

*Assn.*, 347 NLRB 1, 2 (2006). The regular mail copy of the complaint sent to counsel for the Respondent was not returned, indicating actual receipt of the complaint. See, e.g., *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987), *enfd. sub nom. NLRB v. Sherman*, 843 F.2d 1392 (6th Cir. 1988). Additionally, the General Counsel's motion and attached exhibits indicate that the return receipt for the certified mail copy of the October 23, 2019 letter to the Respondent, which included a copy of the complaint, was returned, demonstrating that service was completed.

Lead Cook, Line Cook, Prep Cook, Pantry Attendant, Pantry Attendant Lead, Cafeteria Attendant, Steward, Stewarding Lead, Receiving Clerk, Room Attendant, Public Area Attendant, Laundry Attendant, Laundry Lead, House Attendant, Housekeeping Lead, Bartender, Beverage Server, Food Server, Greeter, Bus Attendant, Outlet Lead, Room Service Server, Room Service Expediter, Captain, Server, Bartender, House Attendant, House Attendant Lead, Banquet Runner, Concierge, Concierge Lobby, Front Desk Agent, Night Front Desk Agent, Front Desk Lead, Operator, Night Operator, Luggage Attendant, Night Luggage Attendant, Door Attendant, Bell Captain, and Lead employed by Respondent at its facility located at 1500 Town Center Drive, Southfield, Michigan 48075, but excluding all managers, confidential employees, security personnel, and guards and supervisors under the Act.

At all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from December 5, 2016 to February 16, 2021.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The following events occurred, giving rise to this proceeding:

1. (a) About April 4, 2019, the Respondent, by Assistant General Manager Sandra Delgadillo, in Delgadillo's office at the Respondent's Southfield facility, denied the request of its employee Catherine Walker to be represented by the Union during an interview.

(b) The Respondent's employee Catherine Walker had reasonable cause to believe that the interview described in paragraph 1(a) would result in disciplinary action being taken against her.

(c) About April 4, 2019, the Respondent suspended its employee Catherine Walker because of the employee's request for union representation as described in paragraph 1.

(d) About April 9, 2019, the Respondent, by Human Resources Manager Julie Jankowski, at the Respondent's Southfield facility, denied backpay to its employee Catherine Walker because she requested a union representative on April 4, 2019.

2. The Respondent engaged in the conduct described above in paragraph 1(c) because the named employee of the Respondent engaged in Union activities, and to discourage employees from engaging in these activities.

#### CONCLUSIONS OF LAW

By the conduct described above in paragraph 1, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaran-

teed in Section 7 of the Act in violation of Section 8(a)(1) of the Act. By the conduct described above in paragraph 1(c), the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent unlawfully suspended Catherine Walker because of her request for union representation and to discourage other employees from requesting union representation at meetings that they reasonably believe could result in discipline, we shall order the Respondent to rescind the unlawful suspension and make Walker whole for any loss of earnings and other benefits suffered as a result of the unlawful discrimination. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In addition, we shall order the Respondent to compensate Walker for any adverse tax consequences of receiving a lump-sum backpay award and to file a report with the Regional Director for Region 7 allocating the backpay award to the appropriate calendar years. *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016).

The Respondent shall also be required to remove from its files any reference to the unlawful suspension of Catherine Walker and to notify her in writing that this has been done and that the unlawful suspension will not be used against her in any way.

#### ORDER

The National Labor Relations Board orders that the Respondent, Atrium Hospitality LP d/b/a The Westin